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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS
OF TORTURE AND DETENTION**

Human rights and forensic science

Report of the Office of the United Nations High Commissioner for Human Rights
submitted in accordance with Commission on Human Rights resolution 1998/36

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Introduction

1. In its resolution 1998/36, the Commission on Human Rights requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to consult with Governments, relevant United Nations bodies and professional organizations of forensic and related experts with a view to updating the list of forensic and related experts with their biographical data, including professional qualifications, current employment, contact address, gender, indications of availability and the kind of assistance they could provide.

2. In the same resolution, the Commission also invited OHCHR and the Crime Prevention and Criminal Justice Division of the Secretariat to consider revising the Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.

3. The Commission requested OHCHR to report to it at its forty-sixth session on progress made in the use of forensic experts, including a revised standardized service agreement regulating their use. The present report is submitted in response to this request.

I. UPDATING THE LIST OF FORENSIC EXPERTS

4. On 14 October 1998 a note verbale was sent to all Governments accredited to the United Nations Office at Geneva and a letter to relevant intergovernmental and non-governmental organizations (NGOs). As at 26 November 1999, replies had been received from 13 Governments (Argentina, Chile, Croatia, Denmark, Ghana, Iran (Islamic Republic of), Kyrgyzstan, Lithuania, Mauritius, New Zealand, Poland, the Russian Federation and Spain). The information contained in the replies related solely to lists of forensic experts. In recommending experts for inclusion in the list, Governments did not make any comments regarding their appreciation of the competence of the experts or on the possible scope of their activities. No reply was received from an intergovernmental or a non-governmental organization.

5. A consolidated list of experts will be established on the basis of all the information received to date.

II. REVISION OF THE MANUAL

6. No comments or suggestions concerning the possibility of revising the Manual or concerning the Principles on the effective prevention and investigation of extralegal, arbitrary and summary executions, adopted by the Economic and Social Council by its resolution 1989/65, were received by OHCHR. Existing relevant legal material has been made available to those human rights bodies requesting them in the fulfilment of their mandates.

III. USE OF FORENSIC EXPERTS

7. The growing number of national conflicts generating gross and massive human rights violations has provided more impetus to the need to resort to forensic and related experts to identify the victims. The magnitude of violence in Kosovo and East Timor, for example, call for more attention from the international community in this respect.

8 A number of special rapporteurs continued to use or refer to the need for the assistance of specialists in various forensic disciplines in the context of the implementation of their mandates.

9 In her last report to the Commission (E/CN.4/1999/103 and Add 1), the Special Rapporteur on the situation of human rights in Somalia, Ms. Mona Rishmawi, noted, *inter alia*, that rape and other sexual violence, which had been uncommon in Somalia before the war, had become a weapon of war for the militia and bandits, as well as in camps for displaced persons and returnees. Clan identity often led to measures resembling ethnic cleansing. Intentional attacks against the civilian population and civilian objects had become common practices. Allegations of the existence of mass graves, notably, in Hargeisa, led a team of forensic experts to examine the sites. The mission was carried out by Physicians for Human Rights (PHR) under the auspices of OHCHR in accordance with Commission on Human Rights resolution 1997/47. The forensic evidence compiled provides the foundation for any future pursuit of legal accountability for identified crimes.

10 Forensic expertise was also required in the investigation of alleged violations of human rights as reflected in the following:

(a) Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir (E/CN.4/1999/39 and Add 1);

(b) Report of the Special Rapporteur on the question of torture, Sir Nigel Rodley (E/CN.4/1999/61);

(c) Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1999/62);

(d) Report of the Working Group on Arbitrary Detention (E/CN.4/1999/63).

11 Special concern was expressed by the Commission about the human rights situation in East Timor, inviting missions and subsequently reports by the Secretary-General (E/CN.4/1999/28), the Working Group on Arbitrary Detention, the Special Rapporteur on violence against women (E/CN.4/1999/68/Add 1 and Add 3), the Special Rapporteur on the question of torture (E/CN.4/1999/61), the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances.

IV. STANDARDIZED SERVICE AGREEMENT

12 The cooperation service agreement regulates the use of forensic experts provided either by a Member State or an NGO. In spite of the stipulations of article I, paragraph 2, of the agreement in annex I relating to the financial responsibility of a Member State or NGO offering a scientist's services, the trend has been for the United Nations to provide the forensic expert with a special contract and an environment (identity card, equipment and other resources) necessary to carry out the tasks assigned to him or her (art. II, para. 1).

13 Recent developments have, however, demonstrated that the United Nations may undertake to pay all expenses in connection with the services of the forensic experts, including honorariums and subsistence allowances and other benefits to which he or she is entitled, in

particular pursuant to the mandate laid down by the Commission on Human Rights in its resolution 1997/58 entitled "Situation of human rights in Zaire" Paragraph 7 (b) of resolution 1998/36 also referred to provisions in a revised standard arrangement for the protection of forensic experts who so serve. Practical implementation of resolution 1997/58 confirmed the necessity of requesting that the recipient Government ensures the protection of the members of the mission.

14. A revised version of a cooperation service agreement was submitted to the Commission on Human Rights for its consideration at its fifty-fourth session (E/CN.4/1998/32, annex II). The Commission did not endorse the text which, taking into account the recent developments in this field, does not require revision. The special service agreement regulating the relations of the individual forensic expert and the United Nations (*ibid.*, annex III) is again attached as annex II

Annex I

COOPERATION SERVICE AGREEMENT

[Preambular paragraphs as required by the particular situation]

Article I

Obligations of the team of forensic experts

1. The team of the forensic experts agrees to make available for the duration and purpose of this agreement the services of (names) as forensic experts. Changes and modifications may be made with the agreement of the parties.
2. The team of forensic experts shall ensure that a certificate of good health is issued by a certified doctor, stating that the expert is fit to travel and has the required inoculations for the country or countries to which he/she travels.
3. The team of forensic experts undertakes to ensure that during the entire period of service under this Agreement, adequate medical and life insurance as well as insurance coverage for service-incurred illness, injury, disability or death is provided to the expert.

Article II

Obligations of the United Nations

1. The United Nations shall provide the forensic expert(s) with a Special Service Agreement and undertakes to pay all expenses in connection with the services of the forensic experts, including honorariums and subsistence allowances and other benefits to which he or she is entitled, and travel costs to and from any site of investigation. The United Nations shall provide the forensic experts with a United Nations Certificate, as well as with office space and other resources necessary to carry out the tasks assigned to him or her.
2. The United Nations does not accept any liability for claims for compensation in respect of illness, injury or death arising out of or related to the provision of services under this Agreement, except where they result from the gross negligence of the officials or staff of the United Nations.

Article III

Obligations of the forensic expert(s)

1. The forensic expert(s) agree(s) to the terms and obligations specified below, and shall ensure that the forensic expert(s) performing services under this Agreement comply with these obligations.

(a) The expert shall perform his or her functions under the authority and in full compliance with the instructions of the High Commissioner for Human Rights, a special rapporteur or representative, or United Nations officers acting on his/her behalf. Such instructions will be given following close consultation with the members of a mission.

(b) The expert shall

- (i) Undertake a mission, from the period to ,
- (ii) To the extent possible, in the framework of the investigations to be carried out by the mission and in conformity with applicable international norms and principles, conduct a forensic survey in areas or at sites determined by a mission. In particular, his or her work will concentrate on the excavation of test pits on mass graves thought to contain human remains. A small number of bodies will be examined in a preliminary way while in the field, in order to establish the case of death. In addition, he or she will prepare a plan for a future and longer forensic investigation if necessary,
- (iii) Take all necessary measures to maintain the confidentiality of all information received or obtained with respect to his/her mandate, including the systematic and careful logging, safekeeping and preservation of its records and files,
- (iv) Submit his/her main findings and conclusions in a preliminary confidential report to the High Commissioner, a special rapporteur or representative, together with recommendations as to further measures that should be considered, no later than , and
- (v) Be terminated upon the completion of his/her final report, to be submitted to the High Commissioner, a special rapporteur or representative, together with all files and records including a complete inventory of sites and/or bodies examined together with photographic documentation, not later than

(c) The expert shall undertake to respect the impartiality and independence of the High Commissioner, a special rapporteur or representative and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government, authority or any other entity external to the United Nations.

(d) The expert shall refrain from any conduct which would adversely reflect on the High Commissioner, a special rapporteur or representative or which is incompatible with the aims and objectives of the United Nations.

(e) The expert shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations

(f) The expert shall treat as confidential all documents, information or data received, compiled or processed by him or her. He or she shall exercise the utmost discretion in all matters relating to his or her functions and shall not communicate, at any time, without the authorization of the Secretary-General to the media or to any institution, person, Government or authority external to the United Nations, any information that has not been made public, and which has become known to him or her by reason of his or her association with the United Nations. He or she shall not use any such information without the written authorization of the Secretary-General and, in any event, such information shall not be used as personal gain. These obligations do not lapse upon expiration of this Agreement.

Article IV

Legal status of the forensic expert(s)

1. The forensic expert(s) shall not be considered in any respect as being an official or staff member of the United Nations.

2. The forensic expert(s) shall be considered an "expert on mission" within the meaning of article VI, sections 22 and 23, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, and shall be entitled to the privileges, immunities and facilities provided for thereunder, wherever he or she performs missions.

Article V

Use of the United Nations name and emblem

The forensic expert(s) shall, in no manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation thereof, in connection with his or her business or otherwise. The forensic expert(s) shall not advertise or otherwise make public the fact of his/her contractual relationship with the United Nations.

Article VI

Entry into force, duration and termination

1. This Agreement may be modified or amended only by written agreement between the parties.

2. Nothing in this Agreement shall be deemed a waiver, expressed or implied, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946.

3. This Agreement shall enter into force upon signature, and shall remain in force for (duration of investigation). The Agreement may be terminated by either party, at any time before its expiry date, by giving the other party written notice of five days (in the case of contracts for a period of less than two months) or two weeks (in the case of contracts for a period of two months or more).

In witness whereof, the respective representatives of the United Nations and expert have signed this Agreement.

Done in _____, this _____ day of _____, 199____, in two originals in the English language.

For the United Nations

For forensic expert(s)

Signature

Signature

(Name and title of authorized official)

(Name of authorized official of Member State or NGO)

Date

Date

Annex II

SPECIAL SERVICE AGREEMENT

[Preambular paragraphs as required by the particular situation]

Obligations of the individual forensic expert

- 1 The expert agrees to make himself/herself available for the duration and the purpose of the Agreement
- 2 The expert agrees to the terms and conditions specified in the "Special Service Agreement" contract herewith attached¹ and shall comply with the obligations herein stated
- 3 The expert shall perform his or her functions under the authority and in full compliance with the instructions of the ... (special rapporteur/independent expert/working group of the Commission on Human Rights or the High Commissioner for Human Rights, as applicable)
- 4 The expert shall undertake to respect the impartiality and independence of the ... (special rapporteur/independent expert/working group/High Commissioner for Human Rights) and shall neither seek nor accept instructions regarding the services performed under this Agreement from any Government, authority or any other entity external to the United Nations
- 5 The expert shall refrain from any conduct which would adversely reflect on the ... (special rapporteur/independent expert/working group/High Commissioner for Human Rights) or which is incompatible with the aims and objectives of the United Nations
- 6 The expert shall comply with all rules, regulations, instructions, procedures or directives issued by the United Nations
- 7 The expert shall, in no manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation thereof, in connection with his or her business or otherwise. The expert shall not advertise or otherwise make public the fact of his/her contractual relationship with the United Nations

This Agreement shall enter into force upon signature of the contract herewith attached

¹ A Special Service Agreement (P.104) form is the standard form utilized by the United Nations to obtain the temporary services of individuals as consultants